

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 31 OF 2020

Maruti Ishwara Kumbhar ... **Petitioner**
Versus
The State of Maharashtra & Ors. ... **Respondents**

Mr. Prashant Bhavake, Advocate for the Petitioner.

Mrs. P. N. Diwan, AGP for the Respondents/State.

**CORAM: S.V. GANGAPURWALA &
 S. M. MODAK, JJ.**

DATED : JUNE 20, 2022

P.C.

1. The petitioner is assailing the recovery claimed and also the further order directing the service to be considered from the year 1991-92.

2. The learned Counsel for the petitioner submits that the petitioner was appointed in the year 1990 for the first time by relaxing the requirement of qualification. The learned Counsel further submits that approval was granted to the appointment of petitioner in the year 1989. Thereafter also the approval was granted to the appointment of the petitioner in the year 1990 and regular appointment was also made and same is also approved. According to the learned Counsel, the recovery claimed is bad in law. Reliance is placed on the judgment of Apex Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer)*¹.

¹ (2015) 4 SCC 334.

3. The learned AGP submits that initially the petitioner was not possessing the required qualification. As such, temporary approvals were given to the appointment of the petitioner. When the petitioner obtained the required qualification, the respondent No.3 under its order dated 31st December 1993 granted permanent approval to the appointment of the petitioner from the academic year 1991-92. The learned AGP further submits that but inadvertently the increments were granted to the petitioner for the academic years 1989-90 and 1990-91. In view of circular dated 20th October 2004, the Director of Vocational Education informed all the Deputy Directors that if the senior pay scale is granted to the teachers/Instructors inadvertently during their temporary appointments, then the concerned college/the Management has to recover the said amount.

4. We have considered the submissions.

5. It appears that the petitioner was initially appointed for the academic year 1989-90 for one year. Thereafter approval was granted for the academic year 1990-91. The appointment of the petitioner on and from 1990 is regularly approved. First date of appointment is considered to be 16/01/1990. The same would be clear from the order of approval dated 1st April 1993 wherein the Deputy Director, Vocational Education has passed the order directing the continuation of regular service and considered the first date of appointment as 16/01/1990. According to the learned Counsel for the petitioner, the order was also passed by the Management and in the service book also the first date of appointment of the petitioner is considered as 16/01/1990.

6. In light of that, for all purposes, the appointment of the petitioner be considered from 16/01/1990. So far as the recovery is concerned for earlier period, the respondents would not be entitled to seek recovery. The petitioner is class III employee. The recovery claimed is for period of more than 20 years. The hardship would be caused if the recovery is made. The Apex Court in case of *Rafiq Masih (supra)*, held as under :

“(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.”

7. The aforesaid parameters are satisfied in the instant case.

8. In light of the above, we pass the following order.

ORDER

- (i) The recovery claimed pursuant to the impugned communication is quashed and set aside.
- (ii) The respondents shall consider the service of the petitioner for all purposes from 16/01/1990.
- (iii) The further consequential and pensionary benefits be accorded considering the service of the petitioner from 16/01/1990.
- (iv) The writ petition is accordingly disposed of. No costs.

(S. M. MODAK, J.)

(S.V. GANGAPURWALA, J.)